C.F 100/-

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

AT BILASPUR

Writ Petition No. 1493 /2002

PETITIONER : Sandeep shouri @ Kake Shouri S/o R.D. Shouri aged about 32 yrs. Resident of Shanti Nagar Vishrampur P.S. Vishrampur Distt. Surguja (C.G.)

P.R. No. 1496/12 Prepared by Shri Deepak Shrivas dated 9.4.2012

VERSUS

RESPONDENTS (1) State of Chhattisgarh through Secretary Home deportment Ministry Dau Kalyan Singh Bhavan Raipur (C.G.)

(2) District Magistrate Surguja Ambikapur Distt. Surguja (C.G.)

(3) Superintendent of Police Surguja Ambikapur Distt. Surguja (C.G.)

PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT OF MANDAMUS AND CERTIORARI

A.F.R.

(88)

HIGH COURT OF CHHATTISGARH ; BILASPUR

Writ Petition No. 1493 of 2002

In the matter of writ petition under Articles 226 & 227 of the Constitution of India.

Sandeep Shouri @ Kake Shouri — Petitioner

Versus

State of Chhattisgarh & Others — Respondents

For petitioner : Smt. Hamida Siddique, Adv.

For respondents : Shri Ranbir Singh, Govt. Adv.

Date of Order

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16 -01-2003

PRESENT:

HON'BLE SHRI JUSTICE P.C.NAIK

Challenge in this writ petition is to the order of externment passed against the petitioner on 15.01.2002 by the District Magistrate Surguja and, the order dated 29.6.2002 passed by the State Government rejecting his appeal.

2. In short, the facts giving rise to the petition are that on 25.7.2000 Superintendent of Police, Surguja forwarded a report to the District Magistrate, Surguja, for initiating proceedings under Section 5(2)(b) and to take action under Section 5 of the M.P.Rajya Suraksha Adhiniyam (in short, 'the Adhiniyam') against the petitioner. On receiving the report, the District Magistrate on being satisfied that it was necessary to initiate the said proceedings, registered the same and held an enquiry. During the course of the enquiry, statements of 7 persons were

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recorded in the presence of the District Prosecution Officer. On a consideration of the material on record, the District Magistrate on 17.10.2001, till which time the enquiry continued, came to record his satisfaction that prima facie a case for suitable action under Section 5 has been made out against the petitioner and accordingly ordered that a notice to show cause in terms of Section 8 (i) of the Adhiniyam be issued to the petitioner. Accordingly such a notice was issued. On receiving the notice, the petitioner filed his show cause and statements of 12 witnesses adduced by him were recorded on various dates. The enquiry, which commenced on 11.8.2000 continued till 15.1.2000 on which date the order of externment was passed.

3. The order of externment is assailed *inter alia* on the ground that it is illegal, arbitrary and contrary to the material on record. It is submitted that the fact that the petitioner has been acquitted in many of the cases has not been noticed by the Authorities. It was submitted that the petitioner is a law-abiding person and the complaints lodged against him were due to ill-will and hence motivated. It was also stated that the orders impugned are not reasoned orders, and, therefore, cannot be sustained. At any rate, it was submitted that restraining the petitioner from entering all the surrounding districts was too harsh and needs to be modified. It was also submitted that since the order visits the petitioner with punishment, adequate reasons ought to have been recorded by the Authority and the failure to do so is sufficient to vitiate the order. On the other hand, it was submitted on behalf of the State that the activities of the petitioner were such that the Authority was justified in

coming to the conclusion that he was engaged in commission of offence involving force or violence and as the record clearly indicated, the witnesses were reluctant to depose against him, the Authority was justified in taking the action it did. It was submitted that the action was a preventive measure for larger public good and on the facts and circumstances of the case no illegality can be said to have been committed by the Authorities in passing the order impugned.

4. To begin with, it may be stated that the proceedings under the Adhiniyam are preventive in nature and the order of externment cannot be construed to be an order imposing punishment. The said Adhiniyam, as is clear, has been enacted to provide for security of the State, maintenance of public order and certain other matters connected therewith. The provisions are intended for taking preventive actions to counteract activities of anti-social elements and the Adhiniyam confers on the Government the power to take appropriate action so that peace and tranquility is not disturbed and one manner of maintaining peace and tranquility is by removal of anti-social elements and restriction of their activities. The Adhiniyam arms the Government with power to make a restriction order and appropriate orders dealing with dispersal of anti-social elements and previous convicts and removal of persons about to commit offences as also removal of persons convicted of certain offences for which appropriate actions may be initiated. The action under this provision is not to punish, but to prevent certain actions which may be prejudicial to the peace and tranquility in

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the community. Thus, the contention that the action under the provision amounts to a punishment cannot be accepted.

5. It is no doubt true that to some extent the order of externment affects the right to movement of a person (within a certain area) against whom an order is passed but then this is preventive and not punitive. Indeed, a citizen has a right to move about freely throughout the territory of India, but this right is not wholly absolute and the State has the power to impose reasonable restrictions on such movement either in the interest of the general public or for the protection of interest of any Schedule Tribe. In the case at hand, the restriction in so far as its prohibits the petitioner's entry in certain specified districts may be complete, but it cannot be said that the order amounts to a total prohibition of the fundamental right of the petitioner guaranteed under Article 19(1)(d) of the Constitution of India. To repeat, the order of externment is not "punishment" but it is a restriction ---- the effect being to restrain the entry and the movement of the concerned person within a specified area. The action of restriction is with the object of maintaining peace and tranquility and the action is taken against the person only after giving him a due opportunity of hearing. Therefore, it cannot be said that in the case at hand the restriction imposed upon the petitioner is arbitrary or of an excessive nature beyond what was required in the interest of the public as it deprives the petitioner from his fundamental right of movement throughout the territory of India.

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6. The contention that the order not being a well reasoned order stands vitiated cannot also be accepted. As has been observed above, the order of externment is not an order imposing punishment and in such cases it cannot be said that the facts on which the action is based should make out a case beyond all reasonable doubts as is required to be made out before holding a person guilty of an offence. Obviously, such orders of externment of individuals like preventive detention are largely precautionary and to some extent can be said to be based on suspicion which should arise from the material placed on record. An order or externment cannot be passed on the ipse dixit of an Authority, but founded on material on record and which is sufficient for arriving at a belief that a person is engaged or about to be engaged in the commission of offence..... Thus, a satisfaction or a belief has to be arrived at by the Authority before it takes any action and this satisfaction or belief is to be based on material placed before him. In the case at hand, it cannot be said that the Authority-respondent No.2 herein, has arrived at a particular conclusion without there being any material on record or in a routine or a mechanical manner. The record indicates that a report giving details was received from the Superintendent of Police. On receiving the report, the concerned Authority examined the matter, initiated an enquiry in which statements of some witnesses and police officials were recorded and only after the Authority was satisfied that a prima facie case was made out that it decided to issue a notice to the petitioner to show cause why appropriate action be not taken against him, which is apparent from the order dated

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17.9.2001 of the Authority. From a perusal of the said order, it is clear that the Authority arrived at that conclusion after appraisal of the facts on record. In other words, his satisfaction has been recorded. Indeed, neither is it necessary nor does the statute require recording of reasons to make out a case beyond reasonable doubt like in a criminal trial before passing an order of externment.

7. In the report submitted by the Superintendent of Police, a reference is made to 16 proceedings that were initiated against the petitioner during the period November 1987 to July 2000. Many of these were proceedings under Section 107, 110,116 (3) and 151 of Cr.P.C., Criminal Cases under Section 294, 506-B, 427/34, 323, 452, 503-B, 147, 148, 149 and 307. The last proceeding in point of time to which a reference is made on 14.7.2000 was under Section 110 Cr.P.C. in which a report involving the petitioner has been filed before the Court. Thus, the incidents to which a reference was made took place during the year 1987, 1991 and between 1998 to 2000. Looking from one point of view, it no doubt appears that the incidents are old and the last proceeding was initiated in the year 2000. But, when one looks from another angle, it becomes obvious that there has been a particular course of conduct of the petitioner involving him in various incidents over a long period of time. The cases relate to preventive Sections i.e.107, 110 and 116 of the Criminal Procedure Code on the one hand and cases under Sections 307, 294, 323, 506-B, 452 and 427 IPC on the other. A case is also under Sections 147, 148, 149, 452 and 307. Even if we ignore the period prior 1991, there are five matters of 1998,

five matters of 1999 and one matter of 2000, which was initiated on the basis of report dated 25.7.2000. Even ignoring the earlier incidents, the incidents of 1998 and 1999 are nine in number. The record indicates that many proceedings were initiated against the petitioner in the year 1999 and one in 2000 and as per the statement, which is clear from the original record, one report dated 18.8.99 and the other report dated 19.7.2000 was also lodged against the petitioner which appears to be subject matter of investigation.

8. It is not doubt true and as pointed out by the learned counsel that in many of the cases, the Court acquitted the petitioner. But from the orders impugned, it is apparent that in most of these cases the witnesses had freigned ignorance of the incident and they have resiled from their statement made during the investigation and in one case even the complainant had resiled from his earlier stand. In other words, the complainant also did not support the prosecution but surprisingly, as is clear from the order of the authority, many of these persons have deposed before the Authority pointing out threats against them by the petitioner and his conduct by which the community is disturbed. In this regard, a reference may be made to Annexures P-3, P-4 and P-8 to the writ petition.

9. In the background of the above facts, relying on the decisions of the M.P. High Court in the case of **Satish Vs. State of M.P. (1991 (2) M.P.W.N. 15)** and **Ayubkhan v. State of M.P. & another** (1994 (1) Vidhi Bhaswar 168) learned counsel for the petitioner submitted that no case for detention has been

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made as the incidents are stale and that at any rate for a period of about two years immediately before passing of the impugned order the petitioner was not involved in any activity that might warrant action against him under the Adhiniyam. Of course it is true that the report of Superintendent of Police is dated 25-7-2000 and that the order of externment was passed on 15-1-2002. But, if the contentions of the learned counsel were to be accepted, it would mean that whatever may be the activities of the person proceeded against under the Adhiniyam, if he maintains good conduct during the pendency of the proceedings no case for action under the Adhiniyam would be made out against him. Then again the question that may arise is whether the conduct of the person against whom proceedings are initiated spread over a number of years can be the basis for proceeding against him under the Adhiniyam or whether the order can be passed only on the basis of his activities / conduct immediately before or during the pendency of the proceedings. These questions need to be considered in the light of the provisions contained in Section 5 of the Adhiniyam whether action can be initiated and order passed where it appears to be the District Magistrate that there are reasonable grounds for believing that a person is engaged or about to be engaged in the commission of offences involving force, violence or offences punishable relating to coin and Government stamps, offences relating to religion or offences affecting the human body or offences affecting the life or under Section 506 or 509 IPC or in the abetment of the aforesaid offences.

10. The aforesaid contention raised by the learned counsel for the petitioner calls for an answer. However, in the context of facts of this case to consider these questions would be a mere academic exercise because on the date when the matter was heard the period of externment had practically come to an end and by now it has come to an end. In this view of the matter the Court feels that it would not be appropriate for it to express any opinion on the said contention and to leave it open for being considered as and when it is raised before this Court in an appropriate proceeding.

With the aforesaid observation, this writ petition stands disposed of. Consequently M.W.P. No.650/2002 also stands disposed of.

Sd/-
P.C.Naik
Judge

Raju
Roshan